

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

January 22, 2013

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No. 12-20208  
Summary Calendar  
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Lyle W. Cayce  
Clerk

FLOYD ABSTON, JR.,

Plaintiff-Appellant

v.

FANNIE MAE; CHEVY CHASE BANK, FSB, A Federal Savings Bank, now known as Capital One Bank; CAPITAL ONE MORTGAGE COMPANY; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Defendants-Appellees

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:12-CV-327  
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Before REAVLEY, JOLLY, and DAVIS, Circuit Judges.

PER CURIAM:\*

Floyd Abston, Jr., appeals the district court's dismissal, for want of prosecution and under its inherent authority, of the suit he brought to stop foreclosure upon his house. Insofar as Abston contends that the dismissal was only for want of prosecution under Federal Rule of Civil Procedure 41(b), our reading of the record refutes this contention and shows that the suit was

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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dismissed both because the district court found it frivolous and because Abston failed to appear for a hearing and offered no good reason for his failure to appear.

Under Abston's view, the district court erred by dismissing his suit for want of prosecution because he missed only one hearing, and this was due to a misunderstanding. He also contends that the district court erred by not considering lesser sanctions before dismissing his suit and that he has a valid claim under the Truth in Lending Act. Our review of the record and the parties' filings shows no abuse of discretion in connection with the district court's conclusion that the suit was frivolous and its concomitant dismissal on this basis. *See Gonzalez v. Trinity Marine Group, Inc.*, 117 F.3d 894, 898 (5th Cir. 1997).

AFFIRMED.